



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Baltimore Electronics Associates, Inc.--
Request for Reconsideration
File: B-227942.3, B-228753.2
Date: September 18, 1987

DIGEST

Dismissal of protest as untimely is affirmed where protester failed to file its protest with the General Accounting Office (GAO) within 10 working days of notice of initial adverse agency action on protester's prior protest filed with the procuring agency. A protest is filed for purpose of GAO timeliness rules when it is received in GAO notwithstanding when it was mailed.

DECISION

Baltimore Electronics Associates, Inc., requests reconsideration of our dismissal of its protest against the Army's rejection of its bids as materially unbalanced in connection with solicitation Nos. DAAB07-87-B-U621 and DAAB07-87-B-U632. We dismissed the protest because we found that it was untimely filed. We affirm our prior dismissal.

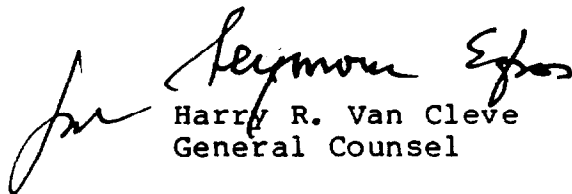
Baltimore initially filed its protest against the rejection of its bids with the Army. By letter of July 17, 1987, the Army denied the protest. Baltimore states that it received the Army's letter denying the protest on July 23. Subsequently, on August 11, 1987, we received Baltimore's protest that the Army improperly rejected the firm's bids as materially unbalanced. We dismissed Baltimore's protest because it was not filed with our Office within 10 working days after July 23, when Baltimore received notice of adverse agency action on its protest filed with the Army. See 4 C.F.R. § 21.2 (a)(3) (1987).

On reconsideration, Baltimore argues that we should consider its protest timely because it was mailed on August 3, 7 working days after Baltimore received the Army's denial of its protest to the Army. Baltimore also believes that its protest should be considered timely because it mailed the protest to this Office promptly after the firm received a copy of General Accounting Office (GAO) decision which the Army cited in its letter denying Baltimore's agency-level protest.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3), provide that where a protest has been filed initially with the contracting agency, any subsequent protest to GAO must be filed within 10 working days of notification of initial adverse agency action. A protest is filed for purposes of our timeliness rules when it is received in GAO, notwithstanding when it allegedly was sent. 4 C.F.R. § 21.2(b); Oxman Knowledge Organization--Request for Reconsideration, B-225000.2, Nov. 24, 1986, 86-2 C.P.D. ¶ 605. Moreover, our Office's time/date stamp establishes the time we received the protest materials absent other evidence to show actual earlier receipt. Yale Materials Handling Corp., B-223180.2, June 12, 1986, 86-1 C.P.D. ¶ 548. Thus, for timeliness purposes, it is irrelevant that the protester mailed its protest with 10 working days of initial notice of adverse agency action. Kinematics/True Time--Reconsideration, B-227305.2, June 18, 1987, 87-1 C.P.D. ¶ 612.

We properly dismissed Baltimore's protest because it was not received in this Office until August 11, 1987, more than 10 working days after Baltimore received notice of initial adverse agency action on its prior protest to the Army. Oxman Knowledge Organization--Request for Reconsideration, B-225000.2, *supra*. Concerning the protester's statement that it waited to protest here until it received a copy of a GAO decision which the Army cited in its July 17 denial of Baltimore's agency-level protest, as explained above, our timeliness requirements require that protests be filed within 10 working days of notification of initial adverse agency action. 4 C.F.R. § 21.2(a)(3). Here, the Army's letter of July 17 denying Baltimore's protest constituted initial adverse agency action and Baltimore had 10 working days upon receipt of that letter on July 23 to file its protest here. See 4 C.F.R. § 21.0(e).

Our prior dismissal is affirmed.


Harry R. Van Cleve
General Counsel